IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 463 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAIRAJSINH TEMUBHA JADEJA

Versus

STATE OF GUJARAT

[Appearance:

MR ND NANAVATY for Petitioners

MR SAMEER DAVE, APP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 18/10/2001

ORAL JUDGEMENT

1. This Revision Application is filed by the petitioners being aggrieved and dissatisfied with the order of learned Addl. Sessions Judge, Gondal, passed on 6th of October, 2001 below Criminal Revision Application No.57 of 2001, by which the learned Additional Sessions Judge, set aside the order passed by the learned Addl.

Chief Judicial Magistrate, First Class, Gondal, passed on 30th September, 2001, rejecting the application of the Investigating Agency for remand of the present petitioner and it was directed by the learned Addl. Sessions Judge that the present petitioners be remanded to police custody from 9th October 2001 to 12th October, 2001. The said order is extended from time to time in this Revision Application.

2. The facts go to show that the incident in question occurred on 3rd September, 2001, in which one Govindbhai Desai, an advocate of Gondal was badly injured who was former President of Gondal Municipality. It is the case that Govindbhai Desai was assaulted by two unknown persons at about 20.00 hours in the Gondal City, while he was proceeding on his luna towards his house situated at Jain Derasar Street in Gondal city. While he was proceeding further, he was assaulted by knife and country made pistol. Both the unknown persons had assaulted Mr. Desai with knife and caused serious injuries on various parts of the body of Govindbhai Desai. The said country made pistol was fell on the ground and the assailants ran away from the scene of offence. Thereafter, one Chandrakant Amrutlal Mehta, the complainant in the case, who was present near the scene of offence, went to the scene of offence, shifted the victim to a private hospital and the complaint was lodged by Chandrakant Mehta before the Police Inspector, Gondal City and offence was registered against the unknown persons at about 00.05 a.m. on the next day, 4th September, 2001 under Sections 307 of the Indian Penal Code and under Section 25 (1)(1-B) of the Arms Act and under Section 135 of the Bombay Police Act. The injured victim was treated in private hospital who had sustained 8 injuries. No doubt, the injuries were serious. The Police Inspector of Gondal City Police Station took over the investigation of the offence and from Police Inspector of Gondal City Police station, the investigation thereafter transferred to CID Crime, Rajkot. On 5th of September, 2001, the statement of the victim was recorded which was at that time in the shape of dying declaration. Thereafter, on 6th September also, the further statement of injured was recorded, in which it was revealed that this assault might have been caused by petitioner No.1 herein due to political rivalry and there was one issue of valuable land between them. During investigation, it appears that the Investigating Agency came to the conclusion that the present petitioners were the conspirators in the said crime and hence Section 120-B of the Indian Penal Code was added in the charge. On 29th September, 2001 at about 5.30 a.m.

the present petitioners were arrested by the Investigating Officer and were produced before the learned Addl. Chief Judicial Magistrate, First Class, Gondal, on the same day at about 2030 hours. The Investigating Officer asked remand of the accused on the following 11 grounds :

(1) Two assailants who were involved in assaulting Mr. Desai are yet to be arrested and they have absconded after the incident.

(2) The country made pistol has been seized and attached from the scene of offence. The muddamal chharol (chopper) is yet to be recovered from the absconding accused.

(3) The details about the supply of country made pistol and the supply of Chopper to the assailants are yet to be collected.

(4) The accused are political influential person and they are not likely to cooperate in the investigation and they are likely to create hurdles in the course of investigation.

(5) The details about the vehicle which was used by the assailants in committing the offence are yet to be collected.

(6) The witnesses who are alleged to have seen the occurrence are not ready to open their mouth because of the terror of the present opponents.

(7) One of the two unknown assailants, Iqbal, the absconding accused is connected with the present MLA - opponent No.1 and he has absconded immediately after the incident.

(8) The time, place of assault has been intentionally selected by the assailants with pre-determined intention.

(9) One of the assailants, Mr. Hanif has been identified by the injured Mr. Desai through photograph. The said Hanif is the close associate of Iqbal who is closely associated with the present sitting MLA Mr. Jayrajsinh Jadeja (petitioner No.1 in this application).

(10) The offence has been committed after hatching a conspiracy of finishing life of Mr. Desai and

details about the role played by each of the conspirators are yet to be collected.

(11) The link between the assailants and present arrested opponents is required to be established by collecting material evidence, which cannot be collected without police remand.

3. Learned Magistrate dealt with each of the grounds and came to the conclusion that no case was made out by the Investigating Agency to remand the present petitioners to the custody of police. Thereupon, the State i.e. Police Inspector, CID Crime, Rajkot, filed Criminal Revision Application No. 57 of 2001 in the Court of learned Addl. Sessions Judge at Gondal. Learned Addl. Sessions Judge heard both the sides and came to the conclusion that there was a prima facie involvement of the present petitioners in the crime and for the further investigation, the remand was necessary and, therefore, he passed the order impugned in this Revision Application.

4. Learned Advocate Mr. N.D. Nanavati on behalf of the present petitioners was heard. Learned APP Mr. Samir Dave for the State was heard. Learned Advocate Mr. K.J. Shethna on behalf of the victim on granting permission by this Court, was heard.

5. It was urged on behalf of the petitioners that no case for the police remand is made out by the Investigating Agencies. Report placed before the Addl. Chief Judicial Magistrate shows that none of the grounds mentioned in the remand application (which are mentioned above as 11 grounds) are sufficient to remand the present petitioners to the police custody. It was urged that the Addl. Chief Judicial Magistrate has rightly and properly rejected by a reasoned order the remand application when all the necessary materials was placed before him. The learned Addl.Sessions Judge ought not to have interfered in the order of rejecting the remand passed by learned Addl. Chief Judicial Magistrate unless the learned Addl. Sessions Judge finds that the order impugned is illegal, improper and incorrect. It was urged that nowhere the learned Addl. Sessions Judge came to that conclusion that the order of the learned Magistrate was improper, illegal or incorrect. It was urged that even if two views are possible, the revisional Court has no jurisdiction to upset the order passed by the lower courts. It was further urged that even mere existing of prima facie case, is no ground to order the remand of

accused in police custody. Learned Advocate Mr. Nanavati after referring to each of the grounds for the remand, commented that none of the grounds is sufficient enough to come to the conclusion that the accused the present petitioners are required to be sent to the police custody. Learned Advocate has relied upon some decisions, which will be referred hereinafter.

6. While learned APP Mr. Dave submitted that on 6, 7, 9 and 10 September, 2001 the statements of the accused were recorded, but nothing could be obtained from them. It was submitted that the present petitioners are charged under Section 120-B of the Indian Penal Code and, therefore, unless they are sent to the police custody, no investigation can further be made. It was urged that the order of learned Addl. Sessions Judge is a reasoned order discussing the issue point wise and the same requires no interference at the hands of this Court. It was specifically submitted that on evidence of 4 witnesses, the prima facie involvement of the accused, present petitioners, is established and for the further investigation as mentioned in the remand application, the police custody is absolutely necessary for the interrogation to the present petitioners by the Investigating Agency. Learned APP Mr. Dave also relied upon certain decisions which will be referred hereinafter.

7. While learned Advocate Mr. K.J.Shethna on behalf of the injured victim on permission of this Court submitted that the accused present petitioners are at present in the hospital, it could not be by chance. They are admitted in the hospital simply to frustrate the cause of justice in case if remand is approved by this Court. It was urged that this is a case of conspiracy and without the custodial interrogation, investigation cannot go ahead. It was also urged that the order passed by the learned Addl. Sessions Judge, Gondal is an elaborate and reasoned one, which requires no interference. It was also urged that if this Court comes to the conclusion that the present petitioners are handed over to the police custody, then, that period should start only after the petitioners are discharged from the hospital. It was urged that in the case of conspiracy, a link between the crime and the accused is required to be established, which can only be established if the custodial interrogation is allowed by the Courts. The learned Advocate stressed upon the utility of the custodial interrogation. The learned Advocate Mr. K.J. Shethna has also relied upon certain decisions, which will be referred to hereinafter.

8. Having heard the rival contentions and gone through the record, the question which is raised is whether in the facts and circumstances of the case, the accused are required to be delivered to the police custody i.e. on police remand. It may be noted herein that it is a clear case of prosecution that during the investigation it transpired that there were two assailants at the scene of offence and they were (i) Hanif and (2) Iqbal. One of them was identified by the victim through the photograph. It is not a case of the prosecution that any of the petitioners was present at the time when the incident occurred, but the present petitioners are being investigated by aid of Section 120-B of the Indian Penal Code. This court, therefore, would be required to go into the principles that when the remand to the police custody can be ordered. The principle of granting or not granting remand is always depending upon the facts and circumstances of the case and collection of evidence by Investigating Agency. On that evidence, the Investigating Agency may ask for the remand of the accused person for further investigation i.e. to say that the Investigating Agency has to make out a case that certain evidence is collected against the accused and without the custodial investigation, no further investigation is possible and if the remand is not granted, the investigation would be throttled. These are the ordinary principle of granting or not granting the remand and it depends upon the facts of each case to grant or not to grant the remand. After keeping in mind the legal principles established by the Court, it will be useful to refer to a decision of this Court on which reliance has been placed by both the side in the matter of SIYARAM GOPICHAND GUPTA & ORS. vs. STATE OF GUJARAT, reported in 1990 (2) GLR 905 wherein after referring many decisions of the Apex Court, this Court quoted in para 23 the words of Lewis Mayers as under :

> "To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other hand is a perennial problem of statecraft."

9. It was observed by this Court in the above said decision that the courts have to strike balance between the propositions above. Meaning thereby that courts will have to see that is there a case made out by Investigating Agency to hand over the accused on remand or on the pretext of remand, the liberty of a citizen is likely to be affected. Therefore, the remand under

Section 167(2) of the Criminal Procedure code is an exception and not the rule. The law does not fasten judicial duty on Magistrate to record reasons for not granting remand to police custody, but it is imperative that Magistrate must record reasons for granting remand to the police custody. Section 167 of the Criminal Procedure Code makes its obligatory on Police Authority to transmit a copy of the entries in the diaries relating to case along with the forwarding of the accused. Passing of the mechanical orders of remand by the Magistrate has been deprecated by law, because Sec. 167(3) of the Code casts duty on the Magistrate to apply judicial mind to the issue. At this juncture Magistrate is bound to satisfy himself firstly that the accusation is whether well founded. The Magistrate will have to satisfy himself that the presence of the accused in police custody is whether absolutely necessary. The Magistrate shall look into the evidence and material collected by the Investigating Agency and, therefore, it is imperative for the Police Officer to transmit case diary to the Magistrate. Remand to police custody should not be granted to collect the material and evidence, when there is no prima facie or at least sufficient material collected by the Investigating Officer. That is exactly making out a case by the Investigating Agency and at that crucial point of time the Magistrate must satisfy himself upon the material collected that without the police custody, it would be impossible for Police Authorities to go further in the investigation and in those cases only remand to the police custody is justified by the law.

10. It is again useful to refer to the observations of the Apex Court in the matter of C.B.I., SPECIAL INVESTIGATION CELL-I, NEW DELHI vs, ANUPAM J. KULKARNI, reported in AIR 1992 SC 1978. This decision is relied upon by the Respondent State. In para 10, the Apex Court observed that " the proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law, the provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a Magistrate for reasons judicially scrutinised and for such limited purpose as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. Article 22(2) of the Constitution of India and Section 57 of Criminal Procedure Code, give a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest."

The Apex Court further observed that "these two provisions clearly manifest the intention of the law in this regard and, therefore, it is the Magistrate who has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody. Section 167(3) requires that the Magistrate should give reasons for authorising the detention in the custody of the police. It can be thus seen that the whole scheme underlying the section is intended to limit the period of police custody." From the above, it is clear that the granting of the remand is an exception and not the rule and for that the Investigating Agency is required to make out a case.

11. So far as the facts of this case is concerned, learned Addl. Sessions Judge came to the conclusion of granting remand because learned Addl. Sessions Judge came to the conclusion that the case was of a serious nature and there was a prima facie evidence showing the involvement of the present petitioners in crime and looking to that i.e. involvement of the present petitioners in the crime, the investigation was required to be taken to the logical end and, therefore, the remand was necessary. Learned Addl. Sessions Judge as a ground of granting remand further observed that the photograph of accused Hanif who actually assaulted Govindbhai was identified by injured Govindbhai Desai and therefore learned Addl. Sessions Judge came to the conclusion that accused Hanif and Iqbal were active participants in the crime. Learned Addl. Sessions Judge came to the conclusion that there was a prima facie evidence to show that one of the assailants Iqbal had connection with petitioner No.1 who was MLA of Gondal. Learned Addl. Sessions Judge also came to the conclusion that there was also prima facie evidence to show that all the accused including the present petitioners had hatched a criminal conspiracy at the field of present petitioner No.5, just one day before of the incident and after considering this factor, learned Addl. Sessions Judge came to the conclusion that there was a prima facie involvement of the present petitioners in the crime and, therefore, he granted remand of the present petitioners to the police custody.

12. I have gone through the entire papers of the investigation. The learned Addl. Sessions Judge and the State herein have placed reliance on statements of four witnesses. Since the investigation is in progress, it is not required for the Court to disclose the names of these persons, but on facts, it will have to be considered that from the material collected by the Investigating Agency

specially through these four witnesses, whether a prima facie involvement of any of the petitioners is established at this juncture as has been observed by learned Addl. Sessions Judge. In other words, whether Police Authorities have made out the case for remand to the police custody.

13. A witness has stated to the extent that there was a keen rivalry between the victim and petitioner No.1 and that was a political rivalry. Not only that one valuable land scam was involved between the two. Petitioner No.1 was overheard to say that the victim was required to be done with. The second witness reveals that near the field of petitioner No.5 on the earlier day, petitioners and Iqbal were seen together. In which this witness overheard in respect of some persons that some person was an eye-score in a election and he was required to be done with. Petitioners No. 1 and 2 were telling to Iqbalbhai that this time the work assigned to him must be scrupulously done. The same is said by the third witness. While the fourth witness whose evidence is also referred by the learned Addl. Sessions Judge, has said that he knew the accused Iqbal and Hanif. On the day of the incident, according to this witness i.e. the fourth witness, Iqbal and Hanif on Splendor Motorcycle went in the city of Gondal and instructed this witness that when this witness hears or saw commotion, then the witness should consult Phone No. 22354 of Jasdan and according to this witness at about 8.00 at night some commotion was noticed and this witness called Phone No. 22354 of Jasdan and said O.K. as instructed. From this evidence of the four witnesses, the learned Addl. Sessions Judge has come to the conclusion that present petitioners are prima facie involved in the crime committed. In fact, the learned Addl. Sessions Judge ought not to have examined the involvement of the petitioners in the crime and instead ought to have examined the evidence collected and whether there was any necessity to remand the accused to the police custody for the further investigation on the grounds advanced. While going through the record, independently it clearly appears at this juncture, that the evidence which is discussed by the learned Addl. Sessions Judge to be prima facie evidence for involvement of the petitioners in crime, neither establishes prima facie involvement of the petitioners in the crime nor could be construed to be enough material to remand the present petitioners in the police custody. None of the witnesses on which the learned Addl. Sessions Judge has placed heavy reliance and the State has placed heavy reliance, has so indicated as to even prima facie conclude the involvement of the present petitioners in

the crime committed even by virtue of Section 120B of the Indian Penal Code. The crime may be serious, the nature of injuries may also be serious but the law and the criminal jurisprudence of this country has established principles for the liberty of the citizens, various provisions to safeguard this object are made in the law. Therefore, the judicial balance is required to be struck between the human liberty and the law enforcement authorities of the State. Whenever, it appears that the custodial interrogation is necessary on above principles, without any hesitation, the accused can be remanded to the police custody. In this case it clearly appears that to make out a case, enough material is not collected by the Investigating Agency.

14. While, going through the above mentioned 11 grounds of the remand, it clearly appears that none of the grounds is sufficient to come to the conclusion that the police custody is necessary for the interrogation even if there be a prima facie material with the Investigating Agency. In the facts and circumstances of the case, irrespective of the involvement of the petitioners in the crime and the material collected by the Police Authorities, none of the grounds is sustainable to order remand in police custody. Remand cannot be granted to obtain confessional statement, the remand cannot be granted to discover materials used by the other accused or for the arrest of the other accused. In this regard, the observation of the Apex Court in the matter of SMT. NANDINI SATPATHY vs. P.L. DANI, reported in AIR 1978 SC 1025 expresses in so many words that when remand contravenes Article 20(3) of the Constitution of India, remand cannot be granted. In para 32 of the said decision, the Apex Court observed as under :

> "32. We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the `silence' clause and bind us willy nilly. We have earlier explained why we regard S. 161(2) as a sort of parliamentary commentary on Art. 20(3). So, the first point to decide is whether the police have power under Ss. 160 and 161 of the Criminal Procedure Code to question a person who, then was or, in the future may incarnate as, an accused person. The Privy Council and this Court have held that the scope of S. 161 does include actual accused and suspects and we deferentially agree without repeating the detailed reasons urged before us by counsel."

Thereafter in paras 42 and 53 the Apex Court observed as under :

"42. Let us hypothesize a homicidal episode in which A dies and B is suspected of murder; the scene of the crime being "C". In such a case a bunch of questions may be relevant and yet be innocent. Any one who describes the scene as well - wooded or dark or near a stream may be giving relevant evidence of the landscape. Likewise, the medical evidence of the wounds on the deceased and the police evidence of the spots where blood pools were noticed are relevant but vis-a-vis B may have no incriminatory force. But an answer that B was seen at or near the scene, at or about the time of the occurrence or had blood on his clothes will be incriminatory, is the hazard of inculpatory implication. In this sense, A answers that would, in themselves, support a conviction are confessions but answers which have a reasonable tendency strongly to point out to the guilt of the accused are incriminatory. Relevant replies which furnish a real and clear link in the chain of evidence indeed to bind down the accused with the crime become incriminatory and offend Art. 20(3) if elicited by pressure from the mouth of the accused. If the statement goes further to spell in terms that B killed A, it amounts to confession. An answer acquires confessional status only if, in terms or substantially, all the facts which constitute the offence are admitted by the offender. If his statement also contains self-exculpatory matter it ceases to be a confession. Article 20(3) strikes at confessions and self-incriminations but leaves untouched other relevant facts."

"53. We hold that Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Art. 20(3) goes back to the stage of police interrogation - not, as contended, commencing in court only. In our judgment the provisions of Art. 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in

> regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read `compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative polixity, overbearing an intimidatory methods and the like - not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Art. 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes `compelled testimony', violative of Art. 20(3)."

15. The above observation of the Apex Court are more relevant in the facts and circumstances of this case because the facts go to show that the incident in question occurred on 3rd September, 2001. The suspicion was raised on the present petitioners by a further statement of the victim which was recorded on 6th September, 2001. Right from 6th September, 2001 to 10th September, 2001, the statements of accused were recorded. The accused came to be arrested on 29th September, 2001. While, they were under the police custody, some statements of the accused appears to have been recorded. If the investigation is an art, I must say that the said art is utilised scrupulously by the Investigating Officer in this case which is revealed by the case diary. During the police custody, the accused were, according to the case diary, heavily interrogated. Not only that but the various devices, according to the Investigating Officer himself were deployed to elicit the truth, but it was in vain. All these attempts on the part of the Investigating Agency suggest that all the attempts which were permissible under Sections 161 and 162 of the Criminal Procedure Code and as per Section 57 of the Criminal Procedure Code were resorted to, but nothing could be found from the present petitioners and hence according to the Investigating Officer himself, an application for the remand was preferred by him. It is not at all difficult therefore to conclude that even after the above attempts, when the Investigating Agency

is not able to elicit the material which the Investigating Agency wants, then on remand, the Investigating Agency can only elicit that material by adopting third decree method. Therefore, firstly no remand can be granted in this case because the same would be violative of Article 20(3) of the Constitution of India. Secondly, so far as this case is concerned, from the facts, as stated above, it is clear that there is every possibility that during custodial interrogation, third degree method may be resorted to elicit confession which is disapproved by the Courts of law in this country. So many times petitioners accused are consulted by Police Authority. Having regard to the grounds advanced for remand to the police custody, petitioners have disclosed ignorance. Even before the Addl. Chief Judicial Magistrate, Gondal, the petitioners have pleaded their ignorance. It is not likely, as said above that petitioners would state their involvement in the crime, unless investigator adopts third degree method. That appears to be the real cause for asking remand to the police custody. These methods are disapproved by the courts of law of this country because "the third degree brutalise the police hardens the prisoner against the society, and lowers the esteem in which the administration of justice is held by public". Not only that but the method is violative of basic fundamental right of human being, irrespective of his status. Remand to the police custody is also required to be refused on this ground.

16. The learned Addl. Sessions Judge fell into the error because the learned Addl. Sessions Judge examined the prima facie involvement of the accused in the crime when there was none, according to the records available. One can have a connection with the other. That would not denote the involvement in the crime. Persons may gather at their own place and free to talk they like. Unless from their talk, it is clearly established that that was preparation for eliminating the victim, it cannot be said that this is enough evidence to keep the petitioners at least in a police custody for the further investigation and interrogation. The remand cannot be granted to obtain the link between the so called accused and the crime when there is no material at all. True it is is that the two accused who were found at the scene of offence may be the real offenders, for this grave and serious crime. Their link with the present petitioners denoting criminality to commit this crime is not on the record. Merely, having known to each other or to grant a loan to accused Iqbal by the present petitioner No.1, would not connect the accused with the serious crime.

The learned Addl. Sessions Judge erred in considering all these evidence to be a link between the absconding two accused and the present petitioners. Not a single line of statements indicates that at this juncture any of the petitioners so far this crime is concerned was so connected with the absconding accused as to involve them with the aid of Section 120-B of the Indian Penal Code. Suffice it to say that no evidence is collected uptill now by the Investigating Agency to infer that for further investigation under Section 120B of the Indian Penal Code the custodial interrogation of the petitioner is absolutely necessary.

17. Learned APP Mr. Dave cited a decision of the Apex Court in the matter of STATE REP. BY THE CBI vs. ANIL SHARMA, reported in (1997) 7 SCC 187 which is in regard to the principles of arrest and interrogation, in connection with granting of anticipatory bail. Likewise, the decision cited by learned Advocate Mr. K.J. Shetha of the Supreme Court in the matter of MURALEEDHARAN vs. STATE OF KERALA, reported in (2001) 4 SCC 638 is also in respect of granting bail by the Court of Sessions on the ground that there was only an evidence of the co-accused. In this respect, the Supreme Court observed that the custodial interrogation was necessary and these decisions will not be helpful to the State for their contention.

18. Learned Addl. Chief Judicial Magistrate has dealt with each ground mentioned in the application of remand. Learned Addl. Chief Judicial Magistrate has rightly come to the conclusion that for that 11 grounds, the petitioners cannot be handed over to the police custody. While learned Addl. Sessions Judge considered the prima facie case against the present petitioners relying on some statements of the witnesses and fell into error to set aside the order of the learned Addl. Chief Judicial Magistrate.

19. In this view of the matter, this Revision Application is required to be allowed and the same is allowed and the order impugned passed by learned Addl. Sessions Judge on 6th October, 2001 which is impugned in this Revision is set aside and the order of learned Addl. Chief Judicial Magistrate, First, Class, Gondal, passed on 30th September, 2001 is restored. Rule is made absolute to that extent. D.S. permitted.

(J.R. Vora, J.)

p.n.nair